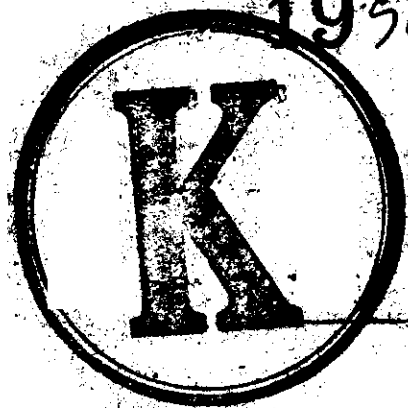




1950

File No. O. Taluqdari
Legal Department 50

A BRANCH

Subject:—

Opinions ~~under~~ regarding
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Office of the R.L.A.

Talukdari estate
of Ahim, district
Karia:
Claim by Thakor
Shiveingji to
the estate
and to the
allowances.

The first question for the R.L.A.'s consideration is whether the applicant's claim to the estate should be admitted by Government.

2. After a long drawn out litigation which reached the Privy Council, it was decided that Mansingji was the validly adopted son of Chhatrasingji, and the claim of the present applicant for possession of the estate was rejected on the ground that Mansingji's adoption was an impediment in the way of his claim to the estate. It is true that Mansingji has since died but it appears that his widow has adopted a son. The validity or otherwise of this adoption has not been enquired into. However, it is undisputed that ever since 1913 Chhatrasingji, who was adopted into the Bhambaria family on 2nd August 1913, was in possession of the estate and allowances till his death and even after his death his son Vijayasingji has been in enjoyment of the said property. It would, therefore, follow that the possession of the estate in the family of Chhatrasingji for over 30-35 years is undisputed. Mansingji, whose adoption was held valid by the Privy Council, took no steps to regain possession of the property and allowances. He died in 1942 and some years thereafter the present applicant has moved in the matter for restoration of the property and the allowances. In view of the long adverse possession of the property and enjoyment of allowances by Chhatrasingji, it appears that the claim of the present applicant would at any rate be impaired by limitation. It would, therefore, be safer to direct the applicant to the civil court to seek his remedy.

3. So far as the allowances are concerned, it is true that one of them is the Toda Giras allowance, which is governed by the Toda Giras Allowances Act, 1937, and under section 3 of that Act, every toda giras allowance is continuable hereditarily to the lineal male heirs in male descent of the first recipient thereof under British rule, which provision was interpreted by the R.L.A. in his opinion

No. 294, dated 11th January 1938 as not including an adopted son who is not a direct descendant. Recently a similar point arose in *Harendrasingji Ranjitsingji v. Udesingji* (49 B.L.R. 318) where the Bombay High Court held that an heir within the meaning of section 3 of the Toda Giras Allowances Act, 1887, includes an adopted son and therefore adopted sons are not excluded from the operation of the Act. Consequently, the R.L.A.'s opinion of 1938 can no longer be relied upon and it will have to be held that Mansingji as adopted son could ordinarily have claimed the toda giras allowance which he did not do. In the same case the Bombay High Court held that the claim for a toda giras allowance is a recurring right and was governed by article 131 of the Limitation Act. This means that a claim to establish a periodically recurring right must be filed within 12 years from the date when the plaintiff is first refused the enjoyment of the right. As stated above, Mansingji's widow is 22 alleged to have adopted a son. If that adoption is proved to be valid, the present applicant Shiwangji can have absolutely no claim either to the estate or to the allowances. Even assuming that the adoption by Mansingji's widow is not held proved, the question would still remain whether Shiwangji's claim for the allowance would be in time. The same considerations will apply to the other allowance even though the succession to that allowance is not restricted to the lineal male heirs as under section 3 of the Bombay Toda Giras Allowances Act. In the circumstances, the proper course would be to direct the applicant to go to the civil court to prove his claim both for the estate and to the allowances. If in that litigation he proves that the adoption by Mansingji's widow is not valid, and that the applicant's claim was not impaired by the law of limitation, it would be open to Government to consider his claim for the allowances. If requested a certificate under the Pensions Act may be issued to the applicant.

Sd/- P.M.Lad^{15.7.}

Revenue Officer of Legal Affairs.

U.R. to R.D. No. 10077, dated the 15th July 1950.